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Immigration and Naturalization Service

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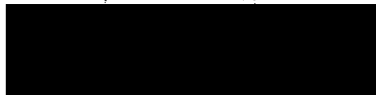
OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: WAC 99 095 52369 Office: California Service Center Date:

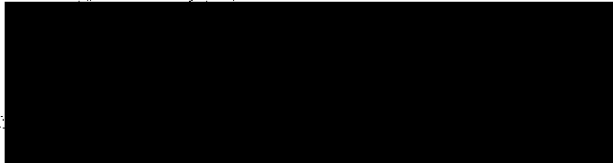
NOV 1 2000

IN RE: Petitioner:  
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(B)

IN BEHALF OF PETITIONER:



Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a computer workstation and RISC chip manufacturer. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a member of technical staff and core design engineer. The director determined that the petitioner had not established that the position offered to the beneficiary consists of qualifying research, or that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if --

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

Service regulations at 8 C.F.R. 204.5(i)(3) state that a petition for an outstanding professor or researcher must be accompanied by:

(i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. Such evidence shall consist of at least two of the following:

(A) Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;

(B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;

(C) Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation;

(D) Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field;

(E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or

(F) Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field;

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from former or current employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

The first issue in contention in this proceeding is whether the position offered to the beneficiary constitutes "research." Denise Espinoza, immigration specialist with the petitioning firm, defines the beneficiary's intended duties:

- Research of IO (input/output) architecture of computer servers with digital media capability, including their storage systems

- and connecting networks, to determine their capacity to handle tremendous amounts of data in a very short amount of time;
- Exploration of methods to enable the synchronization and real-time scheduling of various activities occurring in a distributed environment comprised of several computer systems;
  - Research and software design of scheduling and asset management system;
  - Research, design, implementation, and testing of scheduling algorithms and asset management subsystems;
  - Research and investigate ways to maintain an uninterrupted supply of data despite failures in parts of the system; and
  - Research, design and development of primitives and protocols to expose the capabilities of the underlying system to several applications in a consistent manner and observe them inter-operate.

The director determined that, while the petitioner has defined the beneficiary's tasks as research, "the tasks appear to be engineering design tasks carried out by workers in virtually all major computer technology companies." The director determined that the beneficiary's present position is, essentially, as an engineer who "uses existing principles and technology to solve practical problems" rather than someone who engages in "scholarly or advanced theoretical research" that is "comparable . . . to the work of researchers at universities or other institutions of higher education."

On appeal, counsel condemns the director's use of "two non-legal resources, a dictionary and the Occupational Outlook Handbook to interpret the word 'comparable,'" and observes "the word 'comparable' does not appear" in the regulations. That word does, however, appear repeatedly in the underlying statute, stating that the petitioner must offer the beneficiary a teaching or research position at a university or other institution of higher education, or "a comparable position" at a private research firm.

Counsel does not suggest a more appropriate source for an acceptable definition of "research," a word which most assuredly appears in the regulations as well as the statute. Such a term is readily subject to abuse; a restaurant could contend that its head chef conducts "research" by seeking out and developing new recipes, or an automotive repair shop could assert that a mechanic conducts "research" to determine which type of replacement tire is most appropriate for a given automobile. Although these are extreme examples, obviously the standard for what constitutes "research" must be more stringent and independent than simply the petitioner's attestation that the beneficiary's work constitutes research.

Counsel argues:

[The beneficiary] works with two or three different teams, where he conducts research into standardizing network protocols with varying applications. He specifically investigates new and alternate technologies for protocol standards that are then implemented by the design team. He must research and establish a standard before his co-workers can use valuable resources to create the system designs. His research comes before their designs. He, therefore, does not use "existing principles and technology to solve practical problems," but investigates emerging and alternate protocol technologies prior to the system design.

The petitioner has not shown that the beneficiary's current duties involve adding new information to the global body of basic knowledge in his field. Rather, the beneficiary's work that the petitioner labels "research" appears to amount to various stages of product design. While engineering and design share some degree of common ground with research, there is nevertheless a distinction between the various occupations. The beneficiary's very job title, "member of technical staff and core design engineer," supports the director's finding that the beneficiary is an engineer designing specific products, rather than a researcher exploring the theoretical underpinnings of such products. We affirm, therefore, the director's finding that the beneficiary's occupation is not a full-time research position.

The other issue in contention is whether the beneficiary's work is internationally recognized as outstanding. Service regulations at 8 C.F.R. 204.5(i)(3)(i) state that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The petitioner must meet at least two of six stated criteria. The petitioner claims to have met the following three criteria:

*Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field.*

██████████ states that the beneficiary "has received several requests to review the work of others in the field of Computer Engineering. . . . Thus, he has served as referee for various journals and international conferences." The record contains one such request, in the form of an electronic mail message which opens with the generic phrase "Dear Colleague" and concludes with blank spaces for the recipient to specify his or her name and affiliation. The petitioner has not shown that this type of peer review of submitted manuscripts represents a privilege reserved for internationally recognized scientists, rather than a fairly routine duty for those in the profession.

Evidence of the alien's original scientific or scholarly research contributions to the academic field.

Several witness letters attest to the beneficiary's work. [REDACTED] who like the beneficiary studied for his Ph.D. at Georgia Institute of Technology ("Georgia Tech"), states:

[The beneficiary's] research has concentrated on identifying and studying the various sources of performance problems with these systems, developing mechanisms to improve performance, and designing several primitives which the applications can readily use within a simple programming paradigm. The system, called [REDACTED], developed by [the beneficiary] to run on a cluster of workstations, has significantly contributed to an in-depth understanding of the requirements of real-time applications running on a distributed system and meeting these requirements with elegant solutions. Due to [the beneficiary's] fundamental research in this domain, it is now possible for such applications to share state in a meaningful and performance conscious manner, and run without interruptions even when there are failures in certain components of the distributed system. [The petitioner] is well-known in the research field, as is apparent from the number of papers he has written in prestigious publications.

With regard to this last assertion, [REDACTED] does not explain how the beneficiary's reputation is "apparent from the number of papers he has written." The publication of those papers does not imply that the field, as a whole, has paid particular regard to those papers.

Dr. [REDACTED] associate professor at [REDACTED] states that the beneficiary "helped implement parallel applications . . . on a variety of parallel machines," "built a very nice framework for scalability studies of parallel systems . . . [which] has been useful for understanding the growth of overheads in parallel systems," "came up with a novel machine model for determining the inherent communication in parallel applications by tracking the dataflow in the applications," and "participated in the design of a set of explicit communication mechanisms for latency reduction in shared memory parallel machines." Dr. [REDACTED] asserts that the beneficiary "has impressive results (compared to spatial memory systems) for executing interactive virtual environments on the [REDACTED] cluster using the temporal programming model."

Professor [REDACTED] states:

As applications of computers proliferate, such "scalable systems," that can handle highly complex applications or provide service to [an] increasing number of users, will be in

great demand. For his dissertation, [the beneficiary] worked on scalability of cluster computers for a variety of applications. His work is novel due to a number of reasons. First, the interactive animation application domain explored by him is highly important given the convergence of computers and entertainment. Secondly, he developed a consistency of protocol of distributed shared state which is simple yet it can exploit application semantics to provide improved performance. . . . [The beneficiary] has also made contributions to the areas of highly available and fault-tolerance computer clusters. Such results are important due to our increasing reliance on computers.

Dr. [REDACTED] who had the same research advisor at [REDACTED] as the beneficiary, states that the beneficiary's "research on a top-down approach to studying scalability has led to a vastly increased understanding of the overheads in parallel systems." Dr. [REDACTED] who likewise holds a Ph.D. from [REDACTED] credits the beneficiary with "significant performance improvements in distributed applications."

Every one of the above witnesses instructed the beneficiary, or studied alongside him, at Georgia Tech, and only the beneficiary's former classmates indicate that the beneficiary's work is internationally acknowledged. The narrow range of witness letters does not persuasively establish that the beneficiary's accomplishments are well-known among that vast majority of computer scientists who have no affiliation with Georgia Tech.

*Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.*

[REDACTED] indicates that the beneficiary has written ten published articles, although the articles themselves are not included in the record. [REDACTED] states that the beneficiary's work "has been referenced by others in the field," and represents such references as fulfilling another criterion. The regulations, however, contain no such criterion. While there does exist a criterion pertaining to "[p]ublished material in professional publications written by others about the alien's work in the academic field," a scholarly article is not "about the alien's work" simply because the alien's name is one of dozens included in bibliographic footnotes.

The petitioner submits copies of 15 written pieces that contain citations of the beneficiary's work. The citations in nine of these pieces are self-citations by researchers who had collaborated with the beneficiary on the cited articles. The tenth piece is an (apparently unpublished) research proposal also originating from [REDACTED]

The remaining five pieces, two of which are evidently unpublished doctoral theses rather than published articles, are from independent authors. Two of these pieces are by the same author. While the beneficiary's work has thus come to the attention of researchers in more than one country, the petitioner has not established that this level of attention demonstrates that the international research community regards the beneficiary's work as outstanding in relation to that of others in the field.

The director determined that the petitioner has not shown that the beneficiary's work is widely recognized beyond those institutions where the beneficiary has worked or studied. On appeal, the petitioner submits two additional witness letters. Dr. [REDACTED] of the Department of Computer Science at the [REDACTED] states:

I consider [the beneficiary's] research on different problems of software systems exceptional - especially in the way he combined communication issues (efficient communication mechanisms able to hide read miss latency at the receive end) and fault tolerance (dynamic reconfiguration of the cluster in fact of hard and soft failures) in the same framework. . . .

[The beneficiary] has already achieved international recognition for the quality of his work.

When considering this endorsement, however, we cannot ignore Dr. [REDACTED] assertion that she and the petitioner "were doctoral students together, in Georgia Institute of Technology," and that the two have engaged in "close collaboration." A letter from a former classmate, who happens to be Brazilian, does not establish that the beneficiary and his work are generally recognized among researchers in Brazil.

Dr. [REDACTED] acting director of the [REDACTED] also has close ties with the beneficiary, having "recruited [the beneficiary] to work with me as my summer intern at my laboratory." Dr. [REDACTED] discusses the beneficiary's graduate work at [REDACTED]. The Service does not dispute that the beneficiary conducted research as part of his graduate studies, because generally a Ph.D. degree is inherently research-based. Dr. [REDACTED] asserts that the beneficiary "has established himself as an outstanding student researcher." The use of the qualifier "student" here is telling. The restrictive visa classification which the beneficiary seeks is for outstanding researchers, rather than "outstanding student researchers." With regard to the beneficiary's current work, Dr. [REDACTED] states that he is "given to understand that [the beneficiary] is working on next-generation clusters at [REDACTED]. Clearly the beneficiary has not earned any kind of widespread reputation from this work, if even a former mentor appears to deny direct knowledge of that work



(instead being only "given to understand" that the beneficiary is engaging in that work).

The new letters submitted on appeal - one from a former classmate, one from a former internship supervisor - serve only to reinforce the Service's conclusion that the beneficiary's reputation is largely (though not entirely) confined to those who have worked with him closely. From the evidence available in the record, we cannot conclude that the beneficiary has earned international recognition as an outstanding researcher, as the statute and regulations demand.

In this matter, the petitioner has not established that the beneficiary has been recognized internationally as outstanding in his field. The duties of the position offered to the beneficiary appear to be more akin to design and engineering functions than to scholarly research. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

This finding is without prejudice to any other visa petition in a more appropriate classification, filed on behalf of the beneficiary with the appropriate supporting documentation and fee.<sup>1</sup>

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>1</sup>Indeed, Service records show that another petition, filed by this same petitioner on behalf of the beneficiary, seeking a different classification, was approved on August 10, 2000. Because that other classification requires neither research-based employment, nor international recognition, the dismissal of this appeal should have no practical effect on any benefits arising from the approval of the other petition.